

**United States Department of Labor
Employees' Compensation Appeals Board**

M.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hartford, CT, Employer**

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**Docket No. 13-1610
Issued: December 9, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2013 appellant filed a timely appeal from a May 1, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she reached maximum medical improvement for her accepted conditions.

FACTUAL HISTORY

OWCP accepted that on August 26, 2011 appellant, then a 55-year-old letter carrier, sustained a broken tooth, tear of the medial meniscus of the right knee, neck sprain, postconcussion syndrome, localized primary osteoarthritis of the lower left leg and sprain of

¹ 5 U.S.C. §§ 8101-8193.

unspecified sites of the right knee and leg due to a fall at work.² On March 16, 2012 appellant underwent OWCP-authorized right meniscectomy surgery.

On July 2, 2012 appellant filed a claim for a schedule award due to her work injuries. On October 31, 2012 an “Attending Physician’s Report for Disfigurement” was received by OWCP.

On March 28, 2013 appellant underwent a total right knee replacement performed by Dr. James Mazzara, an attending Board-certified orthopedic surgeon. The procedure was authorized by OWCP.

In a March 13, 2013 report, Dr. David I. Krohn, an OWCP medical adviser, stated that appellant had five percent impairment of the whole person due to her work-related facial scar under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*, 6th ed. 2009).³

In an April 11, 2013 progress note, a physician’s assistant associated with Dr. Mazzara noted findings and indicated that appellant continued to recover from her knee surgery. He recommended physical therapy.

In a May 1, 2013 decision, OWCP denied appellant’s claim for a schedule award of the right leg on the grounds that she had not yet reached maximum medical improvement and therefore permanent impairment could not yet be calculated. It noted that on March 28, 2013 appellant underwent a total right knee replacement and that her right leg condition had not stabilized.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁷

² OWCP accepted that appellant tripped and fell at work on August 26, 2011 striking her face.

³ The adviser indicated that he looked at photos of the scar, but it is unclear if the photos are in the record.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁸

ANALYSIS

OWCP accepted that on August 26, 2011 appellant sustained a broken tooth, tear of medial meniscus of the right knee, neck sprain, postconcussion syndrome, localized primary osteoarthritis of the lower left leg and sprain of unspecified sites of the right knee and leg due to a fall at work. On March 16, 2012 appellant underwent OWCP-authorized right meniscectomy surgery. On July 2, 2012 she filed a claim alleging entitlement to schedule award compensation due to her work injuries. On March 28, 2013 appellant underwent an OWCP-authorized total right knee replacement. In a May 1, 2013 decision, OWCP denied her claim for a schedule award, with respect to her right leg, on the grounds that she had not yet reached maximum medical improvement.

The Board finds that OWCP properly denied appellant's claim for a schedule award regarding the right leg as she had not yet reached maximum medical improvement. On March 28, 2013 she underwent a total right knee replacement and her right leg condition had not stabilized. As noted, the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury and maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁹ There is no medical evidence from a physician stating that appellant has reached maximum medical improvement following her March 28, 2013 surgery.

On appeal, appellant noted that she had filed a schedule award claim for facial disfigurement. The record reveals some development of this issue by OWCP, but the matter is not currently before the Board because the record does not contain a final decision on this matter.¹⁰

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant failed to establish her claim for a schedule award.

⁸ *Adela Hernandez-Piris*, 35 ECAB 839 (1984).

⁹ *See supra* note 7.

¹⁰ *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board